



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

MAY 27 1997

REPLY TO  
ATTENTION OF

May 27, 1997

Regulatory Branch (199600168)

Mr. Lester A. Snow, Executive Director  
CALFED Bay-Delta Program  
1416 Ninth Street, Suite 1155  
Sacramento, California 95814

Dear Mr. Snow:

I am writing concerning the relationship between the CALFED Bay-Delta Program (CALFED) and the U.S. Army Corps of Engineers (USACE) Regulatory program in Sacramento District. The nature of this relationship was stated in our letter agreeing to be a cooperating agency under NEPA for the preparation of the Programmatic Environmental Impact Statement (PEIS). It was subsequently restated in the language that was provided for the draft revised MOU on participation by USACE in the Federal Ecosystem Directorate (ClubFED). Essentially, USACE must retain independent authority to review and evaluate applications for those program features which may eventually require Department of the Army permits prior to construction.

For the vast majority of regulatory actions, we have sufficient organizational capacity to review applicant supplied data and to generate independent NEPA and Section 404(b)(1) documentation. However, for those projects whose potential impacts are significant enough to warrant the preparation of an EIS, we lack sufficient interdisciplinary staff and funding to perform these functions. Consistent with our NEPA implementing regulations, we shift the work associated with the independent review, and in some instances the generation of information on environmental impacts, to an independent third-party contractor.

The mechanism that we use in transferring the workload while ensuring independent review of applicant supplied data, is referred to as a "third-party agreement". Simply described, the permit applicant contracts and pays for environmental review services with a qualified consulting firm. The terms of the contract specify that the contractor takes their direction only from the USACE regulators, and not from the permit applicant. The third-party environmental contractor then assists the regulators in their interdisciplinary review of the environmental documentation. This ensures that our independent review of the materials is substantively and procedurally adequate, while expediting the permitting process.

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I have been informed by my Regulatory staff that CALFED has requested USACE and USEPA to provide documentation that the information contained in the PEIS is sufficient to satisfy our respective requirements for NEPA and Section 404(b)(1). The timing for this documentation would be by the completion of Phase II. They have also indicated that a substantial number of stakeholders are concerned over assurances that permits will be issued in a timely fashion for the storage and conveyance elements of the program. At the same time, there are always constituencies who are scrutinizing our actions in making permit decisions to ensure that we are meeting our responsibilities under the Clean Water Act and the National Environmental Policy Act.

While even with a third-party contract we cannot assume that permits will be issued, with such a contract we can assure that permit decisions will be made in a timely manner. Absent such a third-party agreement, we would be unable to provide such assurances on the timeline that the CALFED program has established for Phase II.

In summary, CALFED will need to fund and obtain the services of a qualified environmental consulting firm to provide adequate interdisciplinary support for the District's Regulatory staff or it is unlikely that we will be able to perform the necessary review of your environmental documentation within your current timeframe. My Regulatory staff is prepared to assist you with the establishment of the necessary documentation to ensure timely review of your documentation within the framework of a third-party agreement. The Point of Contact for this action in my Regulatory Branch is Mr. Jim Monroe at (916) 557-5266. Should you have additional questions, please contact either Mr. Monroe, or Mr. Art Champ, Chief of my Regulatory Branch, at (916) 557-5252.

Sincerely,



Dorothy F. Klasse  
Colonel, Corps of Engineers  
District Engineer

Copies furnished:

BG J. Richard Capka, Commander, U.S. Army Corps of Engineers,  
South Pacific Division, 333 Market Street, Room 1240,  
San Francisco, California 94111-2206  
Felicia Marcus, Regional Administrator, Region IX,  
U.S. Environmental Protection Agency, 75 Hawthorne Street,  
San Francisco, California 94105-3901  
Michael Speer, Regional Director, Region 1, U.S. Fish and  
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Dr. William T. Hogarth, Acting Regional Administrator, National  
Marine Fisheries Service, 501 W. Ocean Boulevard, Suite 4200,  
Long Beach, California 90802-4213  
Mr. Roger Patterson, Regional Director, U.S. Bureau of  
Reclamation, 2800 Cottage Way, Sacramento, California 95825  
Mr. Doug Wheeler, Secretary for Resources, 1416 Ninth Street,  
Room 1311, Sacramento, California 95814  
Mr. James D. Strock, Secretary, California Environmental  
Protection Agency, 555 Capitol Mall, Room 525,  
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Mr. Walter Pettit, Executive Director, State Water Resources  
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Ms. Jacqueline Schafer, Director, Department of Fish and Game,  
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Mr. Dave Kennedy, Director, Department of Water Resources,  
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